FOR THE JUNIORS.

EFFECT OF LAPSE OF TIME ON DEBT SECURED BY DEED OF TRUST.—When a note is secured by a mortgage, deed of trust, or vendor's lien, there is a distinction between the mere *personal* obligation of the debtor, and the *security* for the debt. And it is held in Virginia that, although an action at law on the note may be barred by the statute of limitation, the right to enforce the security is not affected by any lapse of time short of a period sufficient to raise a presumption of payment, *i. e.*, twenty years. And this doctrine would now be applicable to a bond secured by mortgage, etc., as the statutory period on a bond is ten years (Code Va., sec. 2920), while twenty years are required for the presumption of payment. See *Hanna v. Wilson*, 3 Gratt. 232; *Coles v. Withers*, 33 Id. 186; *Smith's Ex'x v. Washington City, &c. R. Co.*, 33 Id. 617; *Paxton v. Rich*, 85 Va. 378; *Tunstall v. Withers*, 86 Va. 892; *Gibson v. Green's Adm'r*, 89 Va. 524. And before the late revision, the presumption of payment in this case, as in others, was rebuttable by any evidence going to show that the debt was in fact not paid—when the security would still be available. But by the Code of 1887, sec. 2935: "No deed of trust or mortgage hereafter given to secure the payment of money, and no lien hereafter reserved to secure the payment of unpaid purchase money, shall be enforced after twenty years from the time where the right to enforce the same shall have first accrued; but this section shall not be considered to embrace any deed of trust or mortgage executed by a corporation." The effect of this statute is to prescribe a *statutory* limitation of the time within which mortgages or deeds of trust given, or liens reserved, to secure the payment of money, can be enforced. The creditor, therefore, cannot after twenty years enforce his security in equity by rebutting the presumption of payment; and his remedy on the *security* is barred in equity in like manner as the *debt* itself is barred at law.

JUDGMENTS—COLLATERAL ATTACK.—It is a fundamental principle of the common law, founded upon reasons of the soundest policy, that the judgment of a court which has jurisdiction of the parties and of the subject-matter, cannot be collaterally assailed by any party to it, howsoever erroneous the judgments may be in fact. The remedy of the aggrieved party, if he has any, is to impeach the judgment directly, by appeal or by such other methods as the rules of practice may authorize. And if the judgment be that of a court of general jurisdiction, the jurisdiction will be presumed until the contrary appears. *Lancaster v. Wilson*, 27 Gratt. 624; *Fox v. Cottage etc. Ass'n.*, 81 Va. 677; *Gunn v. Plant*, 94 U. S. 664; 1 Black on Judg. 245 *et seq.*

An important exception to this rule is that when a court of general jurisdiction has conferred upon it a special statutory power, to be exercised in a special manner, and not in accordance with the course of the common law, then the presumption of jurisdiction no longer exists, but must be made to appear; and the method of procedure must be strictly pursued, else the judgment is void, and is open to collateral attack. *Pulaski Co. v. Stuart*, 28 Gratt. 872; *Wade v. Hancock*, 76 Va.

620; *Richardson v. Seevers*, 84 Va. 259; *Cooper v. Sunderland*, 3 Iowa, 114 (66 Am. Dec. 52 and note); 1 Black on Judg. 279.

In *Pulaski Co. v. Stuart* (*supra*) the phrase "not in accordance with the course of the common law" is interpreted as importing *ministerial* action by the court. The opinion, by Christian, J., makes a distinction between the exercise of special powers when the court acts *judicially* and when it acts *ministerially*—holding that in the former case, the contrary not appearing, the presumption of jurisdiction attaches and the judgment cannot be collaterally assailed, while it is otherwise where the court acts ministerially.

In *Wade v. Hancock* (*supra*) it appeared from the record that the court had exceeded the limited powers conferred upon it in the particular matter; and although its action was judicial, and though the court was one of general jurisdiction, the judgment was held to be void.

POSSESSION OF REAL ESTATE AS NOTICE OF THE OCCUPANT'S TITLE.—In a recent number of this journal (July '95) in connection with the case of *Chapman v. Chapman*, we took occasion to animadvert upon the extent to which the doctrine of constructive notice by possession had been carried by the courts, and expressed the hope that the Legislature would interpose to sustain the salutary policy of our registry laws which this doctrine seemed to us to threaten. But the case which called forth our comments exhibits the doctrine of constructive notice in its simplest and least objectionable form. The case of *Kirby v. Tallmadge*, decided by the Supreme Court of the United States January 6, 1896, illustrates some of the intricate and difficult questions to which it may give rise. In that case the recorded title was outstanding in a third person, and the property was occupied by Tallmadge and wife—the wife having an unrecorded deed to the property. As against purchasers claiming through the person in whom was the recorded title, it was held that possession by husband and wife was not constructively possession by the husband alone, as head of the family, but that such possession was notice of the wife's claim. That is to say, joint possession by husband and wife, is notice of the title of either. But suppose the recorded title is in the husband, are third persons put on notice of an unrecorded title of the wife, by reason of the joint occupancy? Or, again, what if the recorded title is in one occupant and the unrecorded in another occupant (not the husband or wife), of a small portion of the premises, *e. g.*, a single bed room or an office? What if a father with recorded title conveys to one of his children, living with him, by an unrecorded deed? Or to a married daughter living on the same tract, but in a different building? Or where the recorded title is in two persons jointly—as brother and sister—who occupy jointly, but the one has an unrecorded conveyance of the other's interest—may third persons rely upon the record, or are they put on notice that the whole title is in one of the occupants?

Some of these questions are considered by the court in the case last cited. With these and others still more difficult our courts must soon wrestle if the doctrine of constructive notice by occupancy is to remain where *Chapman v. Chapman* has left it.

Since the foregoing was written, we learn that a bill to abolish this doctrine is now pending in the Legislature.